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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,560	10/30/2002	Michael J. Wech	9423.17675-EFS	7628

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EXAMINER

FRANK, RODNEY T

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

22

Office Action Summary	Application No. 10/065,560	Applicant(s) WECH ET AL.	
	Examiner Rodney T. Frank	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-16, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-10 and 17-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6. If this case were to become in condition for allowance, these claims would have to be canceled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-16 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyden (U.S. Patent Number 3,540,276), and further in view of Rieke et al. (U.S. Patent Number 5,379,913; hereinafter referred to as Rieke). Lyden discloses the liquid level gauge includes a guard or shield enclosure for the sight glass comprising a pair of aligned hollow end members vertically spaced from each other. A channel-shaped member extends between the end 15 members and the respective end members have a portion thereof disposed in the corresponding end portion of the channel recess and are secured therein. Fastening means are provided for mounting the gauge onto a container and placing the container contents in communication with 20 at least one of the end members and consequently with the sight glass (please see the abstract).

In regard to claim 11, Lyden discloses in column 2 referring to figures 1-4 a fluid level verification apparatus (11) for a fluid container comprising a tubular sight member (12) defining a

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conduit and having opposite ends, a shield member (14) adapted to receive the tubular sight member having a cylindrical bore, a pair of longitudinally spaced apart end members (15 and 16) each with hollow interiors having cylindrical projections extending therefrom in facing and axially aligned relationship with said sight member; each projection having an axial through bore communicating with the hollow interior of the corresponding end member and further including a circumferential surface exteriorly thereof; and the shield member is secured internally. The internal securing means is not an indentation caused by a punch, rather a spot weld, as disclosed in column 2 lines 63-67. However, Lyden does disclose that a spot weld or other suitable bonding means to secure the channel shaped member (17) of the shield (14) may be used.

Rieke discloses a flange fitting for attaching to the lid of a drum includes a seal tube having a generally cylindrical main body with a relatively thin wall and an outwardly radiating frustoconical lip extension. Also included as part of the flange fitting is a standard drum plug flange having a generally cylindrical main body and an outwardly radiating, frustoconical lip. The drum plug flange is sized and shaped so as to fit within the seal tube such that the lip extension and the lip are generally coextensive with each other. These two components are then able to be anchored into the lid of the drum through a punch press operation which simultaneously clamps and crimps both the lip and lip extension into a raised boss recess thereby precluding any preassembly, such as by welding, of the seal tube and drum flange prior to assembly to the drum lid (see abstract). In short, Rieke discloses a method of securing two parts together in a fitting relationship utilizing a punch and indentation means to secure the parts together. The motivation to combine the teachings of Rieke with the teaching of Lyden is that welding, riveting, threading, crimping, gluing, etc. are all well known means of securing or attaching parts. While Lyden uses a spot weld means to secure the casing, Rieke discloses another method of securing parts in fitting relationship such as to

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provide a seal the utilizes a method other than welding. In fact, the Rieke method specifically discloses the use of a punch to make indentations to secure parts together (see column 4 lines 36-54).

In reference to claims 12-15, the apparatus as described in the claims is disclosed in reference to figures 1-4 of the Lyden reference.

In reference to claim 16, though there is no specific mention of a thermometer included in the tubular sight member, it is well established in the art to manufacture a sight gauge apparatus that includes a thermometer.

In reference to claim 20, Lyden shows that the tubular sight member does not directly touch the sight glass since the sight glass touches the annular sealing member (32) to prevent leakage. This relation ship is shown in figures 2 and 6 and disclosed in column 3 line 1-7.

In reference to claim 21, Lyden does not show a tapered outer surface for the cylindrical projection. However, the examiner takes the position that the taper is a mere design choice and does not produce any unexpected result or advantage over the prior art. It is well established that a proper punch or crimp is more than enough to provide a proper seal for a device. For example, Gibson (U.S. Patent Number 3,596,939) discloses a method of forming a tube joint utilizing a crimp. Column 3 line 69 through column 4 line 2 discloses that even a simple mechanical joinder netted surprisingly strong tubing systems that would withstand pressures of over 1500p.s.i. This would indicate that it is well established in the art that a crimp alone would provide enough strength to join the devices together without the taper in the end device. The evidence relied up should establish "that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance." Ex parte Gelles, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) (See section 716.02(b) of the MPEP).

Response to Arguments

4. Applicant's arguments filed 23 July 2003 have been fully considered but they are not persuasive. The applicant argues the rejection under 35 U.S.C. 103(a) for claims 11-16 being unpatentable over Lyden, and further in view of Rieke et al. The examiner maintains the rejection for at least the following reasons:

5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a leak free system, a seal sufficient to prevent fluid from escaping the system, a sight member made of a breakable material such as glass) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

6. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. For example, the applicant argues that Rieke mentions the use of the punch press to secure the parts from rotation. That would mean that Rieke utilizes the punch to secure something. The examiner takes the position that the applicant is doing the exact same thing. The punch is merely a means to secure the end members to the shield member. Since Lyden clearly discloses in column 2 lines 63-67 that spot welds or other suitable bonding means secure the channel shaped member, the examiner takes the position that crimps, punches, etc. are all suitable bonding means that are well established equivalents to one of ordinary skill in the art. The applicant alleges that the punch is also used to provide a seal for the system. The examiner respectfully disagrees. The seal is formed by the o-ring (36) of the device. Once the end member (18) is placed into the shield

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member (12) it compresses an o-ring (36) thus forming a seal for the device (this is shown clearly in figure 8 of the application), therefore, there appears to be no difference between the punch of Rieke which is used to join parts together and the dentations of the present invention. Further, the applicant argues that Rieke does not require the care involved in sealing a sight member that may be made of glass. The examiner respectfully disagrees with this as well. As clearly seen in figure 8 of the application, the indentation (22) never comes into contact with the glass portion anyway. Therefore, this is a moot point. In fact, as evidenced by figure 8 and 10b, there is no shown embodiment where the indentation or punch could actually interfere with the sight member.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wech (U.S. Patent Number 6,532,815) discloses a fluid level verification device relevant to the state of the art of the present invention.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney T. Frank whose telephone number is (703) 306-5717. The examiner can normally be reached on M-F 9am -5:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (703) 305-4705. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

RTF
October 26, 2003


HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800